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IN THE

Supreme Court of The United States

OCTOBER TERM 1985

EDDIE CORTEZ, Et Ux, Individually
and d/b/a THE CORTEZ AGENCY,

Petitioners,

v.

UNAUTHORIZED PRACTICE COMMITTEE,
STATE BAR OF TEXAS

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF TEXAS

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UNAUTHORIZED PRACTICE COMMITTEE,
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QUESTIONS PRESENTED

1. Whether a state law which regulates the unauthorized practice of law, which disqualifies a jury from determining whether the defendant's services require the particular degree of skill and knowledge associated with that profession, and under which such decisions are made in a manner different from any other regulated profession, comports with the due process and equal protection clauses of the Fourteenth Amendment.

2. Whether a state may, under a state statute regulating the unauthorized practice of law, regulate the field of immigration, an area preemptorily controlled by Congress, and thereby frustrate the policies and goals of the immigration laws.

3. Whether an injunction, entered pursuant to a state statute regulating the unauthorized practice of law, which totally bans advertising and communications with customers in furtherance of a commercial transaction violates the First and Fourteenth Amendments.

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The opinion of the Supreme Court of Texas is reported at 692 S.W.2d 47 and is reproduced in the Appendix at A-1. The opinion of the Court of Appeals for the Fifth Supreme Judicial District at Dallas is reported at 674 S.W.2d 803 and is reproduced in the Appendix at A-11. The judgment of the 134th Judicial District Court of Dallas County, Texas is not reported but is reproduced in the Appendix at A-23.

JURISDICTION

The judgment of the Supreme Court of Texas was rendered on May 18, 1985, and Petitioners' timely Motion for Rehearing was denied without opinion on June 19, 1985. This Petition for Writ of Certiorari is filed within ninety days of that date. This Court's jurisdiction is invoked under 28 U.S.C. § 2101(c).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

(1) U.S.CONST. amend. I

(2) U.S.CONST. amend. XIV

(3) TEX.REV.CIV.STAT.ANN. art. 320a-1 § 19(a):

> For the purposes of this Act, the practice of law embraces the preparation of pleadings and other papers incident to actions of special proceedings and the management of the actions and proceedings on behalf of clients before judges in courts as well as services rendered out of court, including the giving of advice or the rendering of any service requiring the use of legal skill or knowledge, such as preparing a will, contract, or other instrument, the legal effect of which under the facts and conclusions involved must be carefully determined. This definition is not exclusive and does not deprive the judicial branch of the power and authority both under this Act and the adjudicated cases to determine whether other services and acts not enumerated in this Act may constitute the practice of law.

(4) TEX.CONST. art. V § 10:

> In the trial of all causes in the district court, plaintiff or defendant shall, upon application made in open court, have the right of trial by jury; . . .

(5) IMMIGRATION AND NATURALIZATION ACT, 8 U.S.C. §§ 1101 *et seq.*, generally

(6) 8 C.F.R. § 292.1 (1984) (reproduced in the Appendix at A-30)

STATEMENT OF THE CASE

Under a state statute regulating the unauthorized practice of law, Petitioners (the "Cortezes") were enjoined from providing basic immigration consultation services, which consisted mainly of assisting customers in completing the application requirements for obtaining immigrant visas for lawful residency in this country. These application procedures are highly standardized and entail the use of two basic forms, the I-130 and the I-140 petitions, but the Cortezes do not have to choose between them because the I-140 petition is initiated by the alien's employer. The trial court held, as matter of law, that the services required legal skill and knowledge and rendered judgment n.o.v. The injunction entered pursuant to the judgment of the trial court enjoined the Cortezes from advertising, as well as performing the immigration services. The Cortezes appealed, claiming that the trial court erred in holding that the evidence failed to raise a question of fact for the jury. The Court of Appeals agreed and reversed the judgment of the trial court. The Supreme Court of Texas affirmed the trial court and held that in cases involving the unauthorized practice of law, unlike cases involving the unauthorized practice of other professions, a jury is not qualified to determine whether the contested activity requires that degree of skill or knowledge which only a licensed professional may employ.

The Cortezes operate the Cortez Agency, a business begun in 1947 by Eddie Cortez's father. The Cortez Agency has been located in the same building, near downtown Dallas, since that

time. Eddie Cortez performs bookkeeping services and his wife, Rita, performs immigration consultation services.

Before an alien may obtain an immigrant visa to reside in this country legally, the Immigration & Naturalization Service requires him (or a relative living in this country) to make formal application with the local INS division. As part of this application procedure, the alien or the alien's relative must complete and file various forms and compile certain documents such as birth certificates, marriage licenses and the like. After a waiting period which varies in length, the alien appears before his local embassy, presents the necessary documents, and obtains approval for entry into the United States. Priorities among applicants are determined by "preference" categories, based on the degree of relationship between the beneficiary (alien) and the petitioner (a relative who is a lawful permanent resident or citizen of the United States) or on particular professional or occupational qualifications of the alien. The particular preference category for which the alien qualifies often determines the length of the waiting period.

The way to obtain a visa based on the family relationship preferences is to file a document, the I-130 petition, entitled "Petition to Classify Status of Alien Relative For Issuance of Immigration Visa," with the INS. A copy of the I-130 petition is reproduced in the Appendix at A-26. The I-130 petition is the form which begins the process. The petition calls for general information about the alien such as name, address, marital status, place of birth and other similar information. On the cover sheet to the I-130 petition are detailed instructions, describing the preference categories plainly, listing the necessary supporting documentation and informing the petitioner how and where to file. The petition itself requires no legal "terms of art" for its completion, nor are any such terms appropriate. The I-130 petition is followed as a matter of course by at least one other form, depending on the particular preference category involved, which inquires further into the alien's background. As part of the application process, the alien

or petitioner must gather certain documentation described in the I-130 petition or later forms.

Mrs. Cortez assists in all phases of this process. Typically, the alien or the petitioner comes to Mrs. Cortez for assistance in performing this application procedure. The customer informs Mrs. Cortez that he would like to obtain permanent residency for himself or for a relative living in a foreign country. Often the customer has already been to the INS office and has received the necessary forms (the I-130 petition) from a clerk who has told the customer to complete the form and return it. Mrs. Cortez interviews the customer and asks questions regarding preference qualifications as described in the instructions on the I-130 petition. In many cases, the customer is unable to speak English and Mrs. Cortez interprets the questions on the I-130 petition.

In nearly every case in which the customer has not already obtained the necessary document from the INS office, Mrs. Cortez selects the I-130 petition, types in the appropriate answers, and returns it to the customer for filing with the INS. Mrs. Cortez has, on occasion, prepared another form, the I-140 petition, which establishes preferences based on employment or professional or artistic skills. However, Mrs. Cortez never has to select between the I-130 and the I-140 petitions because the I-140 petition has already been initiated by the alien's employer and approved by the Department of Labor before it ever reaches Mrs. Cortez. The I-130 and the I-140 petitions are the only forms which can be used to obtain an immigrant visa based on preference categories. When a customer requires representation before the INS or requires assistance in matters not related to the preparation of these basic forms, Mrs. Cortez refers them to an attorney.

In accordance with the instructions on the forms and in anticipation of later documentary requirements, Mrs. Cortez also instructs the petitioner to begin gathering the necessary documents, which are stored in a fireproof safe at the Cortez

Agency pending the alien's embassy appointment. An alien may wait as long as seven years from the date of filing the I-130 petition before he receives his embassy appointment. During this period, Mrs. Cortez assists the customer in filling out subsequent forms which are sent to the customer by the INS or the embassy. These forms and supporting documentation are part of the alien's "embassy package" which the alien presents at the embassy appointment. For these services, the Cortezes generally charge $400.00.

The Cortezes advertise their services in a Spanish language newspaper, *El Sol De Texas*. The advertisement describes the immigration services as "immigration consultation," lists the address and telephone number of the Cortez Agency and states that the Cortezes speak Spanish. In addition, a translation of one part of the advertisement reads, "35 years experience in every kind of immigration case."

Just as important as what the Cortezes did is what they did not do. They did not hold themselves out as attorneys or appear before the INS or before any other agency on behalf of a customer. They did not defraud or cheat customers out of the fee and, in fact, the Cortezes have never had a complaint filed against them. Despite the language of their advertisement, the Cortezes did not perform any services other than those incident to the preparation of standardized immigration forms.

On July 13, 1983, the Unauthorized Practice of Law Committee of the State Bar of Texas (the "Committee") filed suit in state district court seeking to enjoin the operations of the Cortez Agency. The Committee claimed that the Cortezes' services constituted the unauthorized practice of law and thus violated TEX.REV.CIV.STAT.ANN. art. 320a-1 (the State Bar Act). A jury trial was held and the following issue was submitted:

> Do you find from a preponderance of the evidence that the Cortez Agency has given advice or rendered service requiring the use of legal skill and knowledge in interviewing persons and advising them as to whether or

> not to file a petition or application under the Immigration and Naturalization Act to secure a benefit for the client or relative of the client which require a careful determination of the facts and legal consequences involved?

The jury answered "we do not." The Cortezes moved for judgment on the verdict and the Committee moved for judgment notwithstanding the verdict. The trial court granted the Committee's Motion and entered an injunction against the Cortezes. The judgment entered by the trial court fails to specify the grounds on which it granted judgment n.o.v., except that the acts were undisputed. Presumably, this meant that the evidence did not raise a fact question for the jury.

On appeal, the Court of Appeals reversed the trial court and reinstated the verdict of the jury. The Court of Appeals held that the evidence, though undisputed, was susceptible of differing inferences and thus raised a question for the jury. The Court of Appeals refused to hold that the activities of the Cortezes clearly constituted the unauthorized practice of law. Thus, the judgment n.o.v. was improper and the Court of Appeals deferred to the finding of the jury.

The Texas Supreme Court reversed the Court of Appeals and reinstated the judgment of the trial court. Citing a "direct policing relationship" between the courts and the legal profession, the Texas Supreme Court held that judges must ultimately decide what constitutes the practice of law. Although the Court stated that a jury trial is proper in cases where the acts are in direct dispute, judges may decide in all other instances. The Court failed to address the state of the evidence and whether reasonable minds could have drawn different inferences from the evidence. Instead, the Court drew its own inferences from the evidence, concluding that the Cortezes' services required legal skill and knowledge because of the "dangers" that an alien who is in this country illegally may be deported and that a customer may be misled by the Cortezes' advertisement. The first "danger" relates to the Cortezes due process/equal protection issue while the second goes to the First Amendment issue.

The Cortezes' due process/equal protection claims were not directly raised in the courts below. Such claims could not have been raised directly at earlier stages of the proceedings because they did not arise until the Texas Supreme Court held that individuals accused of practicing law without a license (unlike those accused of engaging in the unauthorized practice of any other profession) have only limited rights to trial by jury. However, the inequitable treatment between individuals similarly situated was raised at many stages of the proceeding (letter brief in support of Motion for Judgment, Appellate Brief, Application for Writ of Error to the Texas Supreme Court). In Section II below, the Cortezes contend that the Texas State Bar Act regulates in the area of immigration in derogation of federal authority. Federal preemption and the scope of coverage under the immigration laws was raised and discussed extensively in questioning of the Committee's expert witness. (Statement of Facts pp. 31-120).

REASONS FOR GRANTING THE WRIT

Under the Texas Supreme Court's interpretation in *Cortez*, the State Bar Act is unconstitutional and infringes upon the uniform administration of federal law. The Act deprives the Cortezes of due process of law and equal protection under the laws as guaranteed by the Fourteenth Amendment, while raising vital questions of policy about the public perception of the legal profession. The injunction entered pursuant to the State Bar Act violates the First and Fourteenth Amendments. Moreover, the State Bar Act permits states to regulate in an area preempted by federal law and to frustrate the policy underlying the federal immigration laws.

I.

THE TEXAS STATE BAR ACT DEPRIVED THE CORTEZES OF DUE PROCESS AND EQUAL PROTECTION BY ESTABLISHING A JUDICIAL PROCESS IN WHICH THE DECISION OF WHAT CONSTITUTES THE UNAUTHORIZED PRACTICE OF LAW IS MADE IN A DIFFERENT MANNER FROM THE DECISION OF WHAT CONSTITUTES THE UNAUTHORIZED PRACTICE OF ALL OTHER REGULATED PROFESSIONS

The State Bar Act, as interpreted by the Texas Supreme Court, offends fundamental principles of constitutional law. The heart of the *Cortez* opinion and the section most offensive to the principles embodied in the Fourteenth Amendment comes near the end, when the Court writes:

> The court of appeals determined that this final question should be one for the jury and relied on *Robertus v. State*, 119 Tex. Cr.R. 370, 45 S.W.2d 595, 597 (1931) which held that a jury should decide whether certain activities constituted the practice of medicine. 674 S.W.2d at 807. *Cases involving other professions are not determinative here.* The courts have the duty and authority to supervise the legal profession by ensuring that those practicing law are qualified and by determing the boundaries of the practice of law. *The direct policing relationship between the courts and the legal profession does not exist between the courts and other professions.*

692 S.W.2d at 51 (Emphasis added). By this language, the Texas Court holds that the Cortezes were simply not entitled to a jury determination of whether their services required legal skill or knowledge. Although the Court did not address the issue, it is clear, given the procedural history of this case, that reasonable minds could have drawn different inferences from the evidence, though it was undisputed. Under normal circumstances, Texas law would have required a jury to draw those inferences and, thus the jury verdict would have stood. However, the Texas Supreme Court chose to draw its own inferences from the evidence and concluded that the Cortezes' services

required legal skill and knowledge and thus constituted the "practice of law".[1]

A. Constitution Protects Cortezes' Activities and Entitles Them to Fourteenth Amendment Protections

Without a doubt, the Cortezes were engaged in a constitutionally protected activity and were therefore entitled to protection from arbitrary state action. As used in the Fourteenth Amendment, "[the term liberty.] is not confined to mere freedom from bodily restraint. Liberty under law extends to the full range of conduct which the individual is free to pursue, ..." *Bolling v. Sharpe*, 347 U.S. 497, 499 (1954). Accordingly, this Court has held that the right to pursue and engage in gainful employment and earn an honest living are recognized liberty interests which are protected from arbitrary state action. *See Truax v. Raich*, 239 U.S. 33 (1915) and *Meyer v. Nebraska*, 262 U.S. 390 (1923).

The Fourteenth Amendment commands that no state shall deprive an individual of a constitutionally recognized liberty interest without due process of law and equal protection under the laws. Called upon to review a state's interference with such interests, a court must inquire into the fundamental fairness between the state and the individual and the equality of treatment between individuals similarly situated. In *Ross v. Moffitt*, 417 U.S. 600 (1974), the Court described the two basic principles of analysis under the due process and equal protection clauses of the Fourteenth Amendment as follows:

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[1] As partial support for its conclusion, the Court cited the "danger" that an alien may be deported as a result of filing an I-130 petition which reveals the alien's whereabouts. How this implicates the practice of law is incomprehensible. An alien is deported because he is here in violation of the laws of the United States, not because laymen (immigration consultants) are betraying some legal duty to the alien. The Court's reliance on this "danger" is completely misplaced.

> "Due Process" emphasizes fairness between the State and the individual dealing with the State, regardless of how other individuals in the same situation may be treated. "Equal protection," on the other hand, emphasizes disparity in treatment by a State between classes of individuals whose situations are arguably indistinguishable.

417 U.S. at 609. Though technically distinct, the "concepts of equal protection and due process, both stemming from our American ideal of fairness, are not mutually exclusive." *Bolling*, 347 U.S. at 499.

B. Cortezes Were Treated Differently From Individuals Accused of Engaging in the Unauthorized Practice of Professions Which Are Indistinguishable From the Legal Profession.

Under the Texas Supreme Court's interpretation of the State Bar Act, the legal profession is treated differently from every other regulated profession and laymen such as the Cortezes are subject to arbitrary state action.[2] Unlike individuals accused of engaging in other regulated professions without a license, who by Texas law are entitled to the full protection of

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[2] The relationship between the Cortezes' due process and equal protection claims can be demonstrated as follows: TEX. CONST. art. V § 10 (the Judiciary Article) provides:

> In a trial of all causes in the district court, plaintiff or defendant shall, upon application made in open court, have the right of trial by jury. . . .

The Texas Supreme Court has interpreted the term "causes" expansively to include all but a special class of proceedings. *See State v. Credit Bureau of Laredo*, 530 S.W.2d 288 (Tex. 1975). While nothing prevents a state from reallocating the traditional functions of judge and jury, or, for that matter, doing away with a jury altogether, *See Chicago Rock Island & P. Ry. v. Cole*, 251 U.S. 54 (1919), the Cortezes' due process claim arises from the Texas Supreme Court's actions in disqualifying the jury and drawing its own inferences from the evidence. This system, when compared with the allocation of power between judge and jury in cases involving the unauthorized practice of all other professions, is so fundamentally unfair in its disparate treatment of similarly situated individuals that it violates due process.

the jury system, a defendant accused of the unauthorized practice of law may not have a jury determine whether his or her services require the degree of skill or knowledge normally associated with that profession. Of course, there will always be instances in which an individual's activites are undisputably the practice of law as there will be similar instances in other professions. However, in unauthorized practice of law cases, where reasonable minds could draw different inferences from the evidence, as was the case in *Cortez*, jurors are disqualified from making those inferences, simply because judges are lawyers and jurors are not. In a world where the law permeates all fields of human endeavor and affects nearly every aspect of our daily lives, this inequitable system of decision-making is alarming and fosters public distrust of the legal profession.

No legitimate distinction can be made between a class of individuals who are allegedly engaged in the practice of law without a license and those who are allegedly engaged in the practice of some other profession without a license. While this Court has recognized certain historical and functional distinctions between professions, which merit consideration of different factors in the First Amendment context, *See Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 773 n.25 (1976), there is nothing unique about the type of service lawyers provide or the history of the legal profession which distinguishes it from others in the context of what process is due a layman who is accused of engaging in the profession without a license. The Texas Supreme Court obviously confuses its role in an integrated Bar with the judicial duty of courts to enforce laws regarding the unauthorized practice of all professions licensed by the State. Courts are bound to enforce the laws whether those laws regulate the practice of law or the practice of medicine. Except for the obvious fact that judges are trained in the law and jurors are not, the Texas Supreme Court fails to describe the particular qualities of the legal profession which insulate it from jury

scrutiny, while other professions are not. A juror knows just as much, if not more, about the practice of law as he or she does about the practice of medicine. Yet, according to the Texas Supreme Court, a jury is qualified to pass judgment on the latter, but not the former.

Given the current public image of the legal profession, it would seem that the judicial system would be *more* eager to have a jury resolve such questions in unauthorized practice of law cases than in cases involving the unauthorized practice of some other profession. This would ensure that the legal profession is, to a certain degree, beyond public reproach. As the Dallas Court of Appeals stated in its decision, ". . . the judicial system must be even handed in its approach." 674 S.W.2d at 807.

Under the logical extension of the rationale in *Cortez*, a board of doctors should determine whether an individual is engaged in the unauthorized practice of medicine and a board of certified accountants should determine whether an individual is engaged in the unauthorized practice of accounting. Obviously, such a hypothetical system is unnecessary because a jury, given the proper criteria, remains qualified to determine whether particular activites require skills beyond those of the average layman.

That the Cortezes were engaged in a constitutionally protected activity is beyond doubt. They were pursuing a lawful occupation and their business enjoyed a good reputation among the community. Unfortunately for them, their services happened to involve an area that has proved profitable for lawyers as well. The fact that after 35 years in business, the Cortez Agency has only now attracted the attention of the State Bar probably indicates that the profitability of providing basic immigration services has only recently increased. Through an

inequitable and arbitrary decision-making process in which judges are the sole arbiters of what shall be done only by lawyers and what may safely be left to laymen, the State has insured profits for lawyers and deprived the Cortezes of their livelihood.

II.

CORTEZ DECISION ALLOWS STATES TO UNDERMINE FEDERAL AUTHORITY AND CONTROL OVER THE ADMINISTRATION OF IMMIGRATION AND TO FRUSTRATE THE POLICIES AND GOALS OF THE IMMIGRATION LAWS

By enacting the Immigration and Naturalization Act of 1952, 8 U.S.C. §§ 1101 *et seq.*, Congress sought to create a nationally uniform system of immigration, while maintaining a historically sensitive and, to the extent possible, generous admissions policy. With the Act, Congress preempted state authority in the area. As this Court has pointed out, it is difficult to imagine an area of the law more susceptible to congressional authority than the area of immigration and naturalization. *Kleindienst v. Mandel*, 408 U.S. 753, 766 (1972). Clearly, in enacting the Immigration and Naturalization Act, Congress has preempted the field. *See Kleindienst*, 408 U.S. 753; *Truax*, 239 U.S. 33; and *Graham v. Richardson*, 403 U.S. 365 (1971).

A. History of Immigration Laws Demonstrates That Congress Sought Uniform and Generous Immigration Policy.

Early in this country's history, immigration matters were left to each individual colony or state.[3] As a result, immigration policies varied greatly among the colonies and, later, among the

[3] An extensive history of the development of the immigration laws is contained in H.R. REP. NO. 1365, 82d Cong., 2d Sess., *reprinted in* 1952 U.S. CODE CONG. & AD. NEWS 1653.

several states. By the early part of the nineteenth century, Congress saw the need for uniform policies of immigration; however, early attempts at a uniform or national legislation were met with resistance from the states. Thus, until 1875, alien migration to the United States was virtually unrestricted. *See Kleindienst*, 408 U.S. 753. In the following years, Congress passed several legislative acts relating to immigration and primarily dealing with the problems of excludability of certain classes of aliens. *Id.* at 761-62. It was not until 1952 that Congress first attempted to pass a comprehensive and complete system of law relating to immigration, nationalization and naturalization. The Immigration & Naturalization Act of 1952, "brought together in one statute the previously atomized subjects of immigration, nationality and naturalization." *United States v. Minker*, 350 U.S. 179, 185 (1956).

Although a uniform system of immigration procedures and control over unlimited migration into this country were obvious purposes of the Immigration and Naturalization Act, these were not the only objectives. The Act also sought to preserve the ideals and principles upon which this country was founded. Running throughout the case law interpreting the Act and the legislative histories of related immigration legislation is an acute awareness of the fact that immigrants still look to this country for freedom and a new start in life and that the founders of this country had a similar vision. This Court has recognized that ". . . few, if any, countries have been as generous as the United States in extending the privilege to immigrate, or in providing sanctuary to the oppressed, . . ." *Fiallo v. Bell*, 430 U.S. 787, 795 n. 6 (1977); *See also* S. REP. NO. 256, 96th Cong., 2d Sess. 3, *reprinted in* 1980 U.S. CODE CONG. & AD. NEWS 141, (legislative history of the Refugee Act of 1980, 22 U.S.C. § 2601, amending the Immigration and Naturalization Act).

B. Liberal Admissions Policy For "Preferred" Aliens is Manifested in Simple and Standardized Admissions Procedures.

One specific provision of the Act provides for the "preferred" admission of the alien relatives of U.S. citizens. The preference categories are listed in 8 U.S.C. § 1153(a). Under 8 U.S.C. § 1154(a), a citizen claiming that a relative is entitled to preference status may file a petition for such classification. The petition is to be in such form as the Attorney General may prescribe. That petition is the I-130 and the procedures for its filing are prescribed in regulations pursuant to this section in 8 C.F.R. § 204.1 (1984). By establishing preferential admissions, Congress sought to preserve the family unit and ensure that non-resident aliens could join family members who were already lawful residents of this country. H.R. REP. NO. 1365, 82d Cong., 2d Sess., *reprinted in* 1952 U.S. CODE CONG. & AD. NEWS 1653, 1680; *See also Fiallo*, 430 U.S. at 795, n. 6.

In keeping with the legislative intent, the preference status admissions procedures and particularly the I-130 petition, which were adopted in the federal regulations, are highly standardized and routine. The I-130 petition contains detailed instructions on how to complete the petition. The first two sections on the instruction form detail the eligibility of a petitioner and describe who may and who may not qualify for preference status. The petition itself asks only basic questions about the beneficiary, such as name, address, place of birth, marital status, and relation to the petitioner.

Yet these procedures, despite their standardization and simplification, remain an insurmountable bar to many aliens and citizens seeking to unite their families in this country. For whatever reason, whether they are unable to speak or read English or whether they lack the minimal intelligence required to follow instructions, many applicants require assistance in the application process. Without help, the applicant's chances of

rejection are greater. As the evidence at trial showed, unless the I-130 petition is completely and correctly filled out, the INS will reject it. The Cortez Agency provides this valuable assistance. In fact, the business was begun by Eddie Cortez's father in 1947 at the suggestion of the Mexican vice-consul at Dallas, who recognized the need for this kind of service.

C. Prohibiting Laymen From Performing Basic Immigration Services Will Reduce Federal Control Over Immigration and Increase Illegal Entry By Aliens.

The effect of allowing states to prohibit basic immigration services and to require that immigration assistance may only be rendered by licensed attorneys will be to frustrate the policies and goals of the Immigration and Naturalization Act as set forth above.[4] The evidence at trial showed that the majority of the Cortezes' customers are at the low end of the economic scale. Many do not speak English and the majority probably could not afford a lawyer, or at least would perceive that they could not afford one.[5] Thus, without services like the ones provided by the Cortez Agency, many citizens and lawful residents will be prevented from bringing relatives into this country, thus depriving them of a basic human need and frustrating the express purpose of Congress in granting preferential status to certain classes of aliens.

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[4] Of course, the State would still retain the authority to enjoin immigration consultants from holding themselves out as attorneys and from performing other traditional legal services, but it may not, consistent with the intent of the immigration laws, prohibit consultants from providing basic services related to the Act.

[5] In *Bates v. State Bar of Ariz.*, 433 U.S. 350, 370 (1977), the Court noted that the fear of high cost and inability to locate a suitable lawyer are significant reasons why many people fail to seek professional legal help.

Federal control over and documentation of immigration, two obvious purposes of the Act, will also be frustrated by application of the *Cortez* decision. The number of illegal aliens in this country is bound to increase without the valuable assistance of businesses such as the Cortez Agency. Rather than deny themselves the pleasures of family companionship, aliens and their relatives are most likely to forego the procedures altogether and have alien family members join them in the United States illegally. Faced with the prospect of high costs and difficulty in locating the right lawyer (whether or not such fears are justifiable), many persons eligible to enter this country will do so without complying with admissions procedures which are intended to document the alien's entry into the United States.

A rule that only attorneys may assist petitioners in the I-130 application process presents enormous practical difficulties. The southern office of the INS reports that last year approximately 55,000 new U.S. residents either moved to or were in Texas when granted permanent residency. Dallas Morning News, July 17, 1985, 1C. It is safe to assume that a substantial percentage of those persons applying for preference status require assistance in completing the application process. Yet there are only four attorneys in Dallas and thirty-three in all of Texas who are board certified in the practice of immigration law. TEXAS LEGAL DIRECTORY 1985. While Texas does not require an attorney to be board certified to practice in a particular area and while there are obviously more than thirty-three lawyers practicing immigration law in Texas, this statistic is indicative of the quantity of competent legal assistance available to persons seeking assistance with the INS application procedures. Thus, the problems of finding the right lawyer, which this Court recognized in *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977) (see footnote 3 above) are compounded.

D. State Regulation of Immigration Services Threatens Uniform Administration of Immigration Laws and Undermines Congressional Authority.

In addition to the practical and human consequences of allowing states to regulate in this area, it will have a further detrimental effect on the uniform administration of immigration. The dangers of inconsistent regulation of immigration services among the states will increase. The Yellow Pages of various cities located in states bordering Mexico list numerous "immigration consultants." It is apparent that services such as those provided by the Cortezes are not unique to Texas. Yet, Texas courts would prohibit laymen from assisting petitioners in obtaining immigrant visas for relatives, while New Mexico, Arizona or California may not. The potential for such inequitable results is great, yet the prevention of such inconsistency was one of the very purposes of the Act.

The Immigration and Naturalization Service has implicitly recognized an overriding policy of Congress that states, even under the guise of professional regulation, must not be permitted to interfere with the uniform administration of immigration law. Under 8 C.F.R. § 292.1(1984), certain specified individuals, who are not attorneys and who do not charge for their services, may represent an alien in a deportation proceeding.[6] This regulation demonstrates the lack of state authority in the area in at least two ways. First, the INS has recognized the potential conflict between state regulation of the unauthorized practice of law and federal administration of immigration laws

[6] This particular regulation highlights an ironic anamoly which results from the application of Texas law to federal immigration administration. Under Texas law, the fact that someone charges for a service is immaterial to the issue of whether the service is the "practice of law." *Grievance Comm., State Bar of Tex., Twenty-First Cong. Dist. v. Dean*, 190 S.W.2d 126 (Tex.Civ.App.—Austin 1945, no writ). Yet, a layman who charges for appearing before the INS on behalf of an alien would lose his exemption and would be guilty of practicing law without a license.

and has chosen to exempt certain groups or individuals from state control. Thus, Congress through the Act and its regulations, has completely preempted state authority over individuals engaged in services related to the Act. Second, by dealing only with the question of who may represent an alien in deportation proceedings or other appearances, the INS has clearly dealt with traditional areas of legal expertise. It is inconceivable that Congress could have imagined that the everyday, prefunctory filings of the I-130 petition required specialized legal skills.

III.

INJUNCTION DENIES THE CORTEZES RIGHTS UNDER FIRST AND FOURTEENTH AMENDMENTS BY ENJOINING ALL COMMUNICATIONS ASSOCIATED WITH THEIR SERVICES

The permanent injunction, initially entered by the trial court and reinstated by the Texas Supreme Court, prohibits the Cortezes from advertising their services and advising and interviewing customers in furtherance of their immigration consultation services. (See Appendix at A-23). The prohibition is total and absolute.

The Cortezes' activities fall within the general class of communications known as "commercial speech." Their advertisement, which the state prohibited entirely, communicated information about their business and proposed a commercial transaction. In furtherance of that proposed transaction, the Cortezes engaged in other forms of communication, which were also prohibited by the injunction. Whatever else these communications may have been, they were clearly within the class of communications covered under the "commercial speech" doctrine.

In the last decade, the Court has developed a body of law applicable to a class of speech known as "commercial speech."

Although the exact boundaries of the category of speech termed "commercial speech" have not been precisely drawn, the Court relies heavily on "the 'common-sense' distinction between speech proposing a commercial transaction ... and other varieties of speech." *Ohralik v. Ohio State Bar Association*, 436 U.S. 447, 455-56 (1978). The Court has developed the commercial speech doctrine primarily in response to state statutory restrictions on professional advertising. *See Virginia Pharmacy Board*, 425 U.S. 748; *Bates* 433 U.S. 350; and *In re R.M.J.* 455 U.S. 191 (1982). The doctrine necessarily must also extend to communications and speech in furtherance of the transactions proposed in the advertisement.

Like other varieties of speech, commercial speech enjoys First Amendment protections, though less extensive than those afforded "non-commercial speech." *R.M.J.*, 455 U.S. at 203. Of course, the state may eliminate inherently false or misleading advertising and may prohibit speech which furthers illegal activites. States may also restrict potentially misleading information, but may not restrict it entirely, if the information may be presented in a way that is not deceptive. Furthermore, states may regulate communication which is not misleading, but the state must demonstrate a substantial interest and the regulation must be proportional to the interest served. *Ibid.* Thus, there are three basic categories of speech, each subject to a different degree of regulation. The first category is inherently false or misleading speech, the second is potentially misleading speech and the third is truthful speech.

To hold that the Cortezes' activities were not entitled to First Amendment protection because they concerned "unlawful" activity (the unauthorized practice of law) and were misleading would be to dramatically over-simplify the issue and ignore the record in this case. The record does not support a characterization of the Cortezes' communications as inherently false or misleading. There was absolutely no evidence that anyone was actually misled by the Cortezes' advertisement.

The Texas Supreme Court, on its own accord, inferred that the Cortezes' advertisement could potentially mislead customers, but it did so without proof from the state. To the extent that the Cortezes' communications (the advertisement) were misleading, the information falls into the second category of speech, that is, information which can be presented in a way that is not deceptive.

The reasons cited in support of the *Cortez* decision demonstrate that a less restrictive injunction is appropriate. In its opinion, the Texas Supreme Court held that "the act of determining whether the I-130 should be filed at all does require special legal skills." 692 S.W.2d at 50. As support for this, the Court cited two "dangers," one of which is discussed in footnote 1 above. The other "danger" cited by the Court was that the alien or the customer may be misled by the advertisement when combined with Mrs. Cortez's statements that she could not help them if they failed to qualify for a preference. The Court stated "[w]e therefore hold that the undisputed activities of the Cortezes in selecting and preparing the various immigration forms required legal skill and knowledge." *Id.* at 50. Presumably, if this danger were removed, the Cortezes' immigration services would no longer violate the State Bar Act.

A less restrictive injunction would accomplish this goal and would not deprive the Cortezes of an opportunity to make a living. Even assuming that the government has a substantial interest in the regulation, the total ban on the Cortezes' communications does not directly advance that interest and is far more extensive than necessary. For example, an injunction requiring the Cortezes to qualify the language in their advertisement and issue to customers appropriately worded disclaimers, detailing the limitations of Mrs. Cortez's consultation practice would both directly advance any governmental interest and protect First Amendment rights. Thus, the competing interests of the state and the individual will be best served by a less restrictive injunction.

CONCLUSION

The State Bar Act, as construed by the Texas Supreme Court, establishes a fundamentally unfair and inequitable system of deciding who has transgressed the uncertain boundaries of the practice of law. The judicial system should keep unlicensed laymen from engaging in the practice of law the same way it polices other regulated professions, that is, with the full protections and safeguards under the law. With their livelihood at stake, the Cortezes were entitled to nothing less.

Besides denying the Cortezes the protections guaranteed by the Fourteenth Amendment, The State Bar Act, when applied to persons performing services relating to the Immigration and Naturalization Act, impedes the uniform administration of the immigration laws and frustrates the express intent of Congress. Prohibiting persons from performing services like those performed by the Cortez Agency will impair the vitality of the immigration laws in many ways. Such prohibitions will deprive citizens and lawful residents from enjoying the benefits expressly conferred under the Act and will undermine uniform control over immigration and naturalization.

Finally, the injunction entered pursuant to the Act violates the Cortezes' First Amendment rights. The injunction could have been more narrowly drawn to serve both the interests of the State in protecting its citizens and the interests of the individual in the right to freedom of speech.

This petition for writ of certiorari should be granted in order to resolve these vital questions of law and policy.

Respectfully submitted,

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CERTIFICATE OF SERVICE

We, Allen Weed and Brett A. Ringle, members of the Bar of the Supreme Court of the United States, do hereby enter our appearance in this case on behalf of Petitioners, Eddie and Rita Cortez d/b/a The Cortez Agency.

In accordance with Rule 33 of the Rules of the Supreme Court of the United States, the undersigned hereby certifies that three (3) copies of the foregoing Petition for Writ of Certiorari have been served on Bertran T. Bader III, counsel for the State Bar of Texas, by depositing the same in a United States Post Office, with first class postage prepaid, addressed to Cox & Bader, 211 North Ervay Building, Suite 1004, Dallas, Texas 75201, on the 17th day of September, 1985.

Allen Weed
Brett A. Ringle

[692 S.W.2d 47]

UNAUTHORIZED PRACTICE COMMITTEE, STATE BAR OF TEXAS, Petitioner,

v.

Eddie CORTEZ et ux, Individually and d/b/a Cortez Agency, Respondents.

No. C-3380.

Supreme Court of Texas.

May 8, 1985.

Rehearing Denied June 19, 1985.

Unauthorized practice of law Committee brought action against private immigration service agency and its owners to enjoin them from engaging in acts and practices which allegedly constituted unauthorized practice of law. The 192nd District Court, Dallas County, Snowden M. Leftwich, Jr., J., granted committee's motion for judgment notwithstanding the verdict after jury found that owners exercised no legal skill or knowledge in performing certain services pertaining to immigration, and entered permanent injunction against owners. Defendants appealed, and the Court of Appeals, 674 S.W.2d 803, Whitham, J., reversed and rendered. The committee sought writ of error. The Supreme Court, Spears, J., held that: (1) undisputed activities of private immigration service required legal skill and knowledge; (2) it was for Court to decide whether undisputed activities amounted to practicing law; and (3) Courts were not bound by jury's determination of whether undisputed acts fell within statutory definition.

Court of Appeals reversed; trial court affirmed.

1. Attorney and Client ⇐ 11(2)

Statement by private immigration service owner that she would say that there was no way she could help if client did not qualify for preference under form instructions, when combined with advertisement representing experience in every kind of immigration case, could likely mislead client to believe there was nowhere else to seek help and no other possibility for obtaining permanent residency, which was type of occurrence which was sought to be prevented by prohibiting unauthorized practice of law. Vernon's Ann.Texas Civ.St. art. 320a-1, §§ 1 et seq., 19(a).

2. Attorney and Client ⇐ 11(2, 3)

Activities of private immigration service agency including interviewing clients and filling out forms to be filed with the Immigration and Naturalization Service, advising clients as to whether they qualified to file various petitions and applications, and determining whether immigration forms should be filed at all, required legal skill and knowledge and thus, constituted unauthorized practice of law.

3. Attorney and Client ⇐ 11(13)

When activities alleged to be practice of law are undisputed, it is for court to decide whether those activities amount to practicing law. Vernon's Ann.Texas Civ.St. art. 320a-1, § 19(a).

4. Attorney and Client ⇐ 11(2)

Statute providing that definition of "practicing law" was not exclusive and did not deprive judicial branch of power and authority under the State Bar Act and adjudicated cases to determine whether other services and acts not enumerated in such Act might constitute practice of law, was apparent intent to recognize inherent power of courts to determine what is the practice of law on case-by-case basis, unconfined by statute. Vernon's Ann.Texas Civ.St. art. 320a-1, § 19(a).

5. Attorney and Client ⇐ 11(2)

Courts are not bound by jury's determination of whether undisputed acts fell within statutory definition of "practicing law." Vernon's Ann.Texas Civ.St. art. 320a-1, § 19(a).

6. Attorney and Client ⇐ 11(13)

Cases involving professions other than law are not determinative on question of whether practicing law without authorization is one for jury.

[692 S.W. 2d 48]

7. Attorney and Client ⇐ 11(1)

Courts have duty and authority to supervise legal profession by ensuring that those practicing law are qualified and by determining boundaries of practice of law. Vernon's Ann.Texas Civ.St. art. 320a-1, § 19(a).

8. Courts ⇐ 1

The direct policing relationship between courts and legal profession does not exist between courts and other professions. Vernon's Ann.Texas Civ.St. art. 320a-1, § 19(a).

9. Jury ⇐ 19(1)

Right to trial by jury still exists in cases of unauthorized practice of law where alleged acts are disputed and factual determinations must be made, but courts may ultimately decide whether certain undisputed activities constitute unauthorized practice of law. Vernon's Ann.Texas Civ.St. art. 320a-1 § 19(a).

Bertran T. Bader, III, Dallas, for petitioner.

Shank, Irwin and Conant, Allen Weed, Dallas, for respondents.

SPEARS, Justice.

This is an injunction case in which the Unauthorized Practice of Law Committee (the Committee) of the State Bar of Texas seeks to enjoin Eddie and Rita Cortez (the Cortezes) from engaging in certain acts alleged to be the practice of law. The trial court rendered judgment n.o.v. for the Unauthorized Practice Committee and issued a permanent injunction against the Cortezes. The court of appeals reversed the trial court judgment and dissolved the temporary injunction. 674 S.W.2d 803. We reverse the judgment of the court of appeals and affirm the trial court judgment.

Mr. and Mrs. Cortez are engaged in the business of providing immigration and bookkeeping services. Neither Mr. or Mrs. Cortez is a licensed attorney at law. Mrs. Cortez provides assistance to persons who are seeking to obtain immigration visas and permanent residency. The undisputed evidence at trial showed that the most common practice performed by Mrs. Cortez is the selection and completion of the I-130 form (Petition to Classify Status of Alien Relative for Issuance of Immigrant Visa) for customers, by interviewing them, and filling out the form according to the instructions provided by the Immigration and Naturalization Service. Mrs. Cortez testified that normally a form G-325A (Biographical Information) and a form I-485 (Petition to Acquire Residency) were also required and she prepared these as well. She also completed several other forms less frequently, such as the I-140, I-600, N-600, and OF-230.

The Cortezes charged a fee, usually $400, for preparing these forms, gathering and storing the supporting documentation, and seeing that the alien has all documents necessary for his embassy interview. They have solicited customers by advertising in a Spanish-language newspaper. The translation of the ad reads, "The Cortez Agency has had 35 years of experience in every kind of immigration case. Consultation of Immigration by Cortez."

The Committee brought suit to enjoin the immigration activities of the Cortez Agency, and trial was before a jury. The sole special issue, submitted without objection, asked:

> Do you find from a preponderance of the evidence that the Cortez Agency has given advice or rendered service requiring the use of legal skill and knowledge in interviewing persons and advising them as to whether or not to file a petition or application under the Immigration and Naturalization Act to secure a benefit for the client or relative of the client which require a careful determination of the facts, conclusions and legal consequences involved?

The jury answered, "We do not."

The Committee moved for and obtained a judgment n.o.v. which permanently enjoined the Cortezes from advising customers whether or not to file particular petitions, from preparing for customers any

[692 S.W.2d 49]

petition or application under the immigration laws, and from soliciting clients or customers through advertisements which suggest expertise and competence to handle immigration problems or cases.

Although the Committee vigorously argued that what the Cortezes were doing was undisputed, thus leaving a question for the court, the court of appeals dissolved the injunction holding that different inferences could be drawn from the undisputed testimony regarding the Cortezes' activities, thus creating a fact issue for the jury. The court of appeals further held that the determination of whether an activity required legal skill or knowledge was also a question for the jury. Therefore, the court of appeals held the jury finding was binding on the trial court. 674 S.W.2d at 807-08.

The Committee brings three points of error alleging that the trial court was correct in disregarding the jury verdict. First, the Committee argues that the activities of the Cortezes have been indisputably determined; therefore, no jury is needed to

resolve a factual dispute. Second, the Committee contends that whether the undisputed activities constitute the unauthorized practice of law is a question of law for the court and not one for the jury. Third, the Committee argues that the undisputed activities of the Cortezes do constitute the practice of law. We will examine these questions together because of the interdependence among them.

We begin with the legislative expression of what constitutes the practice of law in Texas. The State Bar Act, Tex.Rev.Civ.Stat.Ann. art. 320a-1, §19(a) (Vernon Supp.1985) defines the practice of law as follows:

> For purposes of this Act, the practice of law embraces the preparation of pleadings and other papers incident to actions of special proceedings and the management of the actions and proceedings on behalf of clients before judges in courts as well as services rendered out of court, including the giving of advice or the rendering of any service requiring the use of legal skill or knowledge, such as preparing a will, contract, or other instrument, the legal effect of which under the facts and conclusions involved must be carefully determined. This definition is not exclusive and does not deprive the judicial branch of the power and authority both under this Act and the adjudicated cases to determine whether other services and acts not enumerated in this Act may constitute the practice of law.

This definition contains two major parts, one encompassing services rendered in connection with legal proceedings and one encompassing services rendered out of court.

The parties have focused upon both major parts of this definition to determine whether the Cortezes are practicing law. First, the statute specifically characterizes the preparation of pleadings incident to legal proceedings as the practice of law. The Committee argues that because the I-130 form, commonly filled out by Mrs. Cortez for others, constitutes the initial document petitioning the government for a preferential immigration status, its preparation falls within the statutory definition.

The Cortezes' expert witness, Mr. Sauceda, an attorney, stated that he did not consider the form I-130 to be a "petition," as attorneys would say, to start an action in a lawsuit. Second, the parties have focused upon the portion of the definition relevant to out-of-court matters by inquiring whether the preparation of these immigration forms required the use of legal skill or knowledge and whether the legal effect of the forms must be carefully determined. This question was the gist of the special issue submitted to the jury, which found that the Cortezes activities did not require the use of legal skill and knowledge. We do not decide whether the forms such as the I-130 constitute pleadings within the meaning of section 19(a) of the State Bar Act. Rather, we decide the case on the portion of the section dealing with out-of-court services.

The evidence of Mrs. Cortez's activities in interviewing customers and filling out

[6925 S.W.2d 50]

forms to be filed with the Immigration and Naturalization Service was undisputed, and showed that she was advising her customers as to whether they qualified to file the various petitions and applications. The question of whether interviewing clients or customers and preparing immigration forms is the practice of law is one of first impression for this court. Apparently only one state court of last resort has addressed this issue. In *The Florida Bar v. Moreno-Santana*, 322 So.2d 13 (Fla.1975), the Supreme Court of Florida enjoined a non-lawyer from preparing immigration and naturalization forms for others and from advertising or representing the ability to perform such services. *Id.* at 15. The Cortezes seek to distinguish this Florida case by noting that the individual there represented himself to be an attorney. The Florida court, however, adopted the findings of the referee that the preparation of immigration forms to change the status of an alien requires legal training. *Id.* at 15-16. In *The Florida Bar v. Retureta-Cabrera*, 322 So.2d 28, 29 (Fla.1975), another individual was enjoined from preparing these immigration forms.

[1, 2] Although the act of recording a client's responses to the questions on the form I-130 probably does not require legal skill or knowledge, the act of determining whether the I-130 should be filed at all does require special legal skills. The Cortezes often filed I-130 forms which reflected that the alien seeking a visa was in this country illegally and furnished the immigration authorities with the alien's address, thus making deportation more likely. Therefore, advising a client as to whether to file an I-130 requires a careful determination of legal consequences.

Another danger is also presented by the manner in which the Cortezes conduct their business. When Mrs. Cortez was asked what she would do if the client did not qualify for a preference under the form instructions, she testified that she would say that there was no way she could help. This act, when combined with the advertisement representing experience in every kind of immigration case, could likely mislead a customer to believe there is nowhere else to seek help and no other possibility for obtaining permanent residency. This is a type of occurrence which is sought to be prevented by prohibiting the unauthorized practice of law. We therefore hold that the undisputed activities of the Cortezes in selecting and preparing the various immigration forms required legal skill and knowledge.

[3] Our holding presumes we have concluded that when the activities alleged to be the practice of law are undisputed, it is for the court to decide whether those activities amount to practicing law, and we now set forth the reasons for this conclusion. In the definition of practicing law in section 19(a) of the State Bar Act, the legislature ended the section stating:

> This definition is not exclusive and does not deprive the judicial branch of the power and authority under this Act and the adjudicated cases to determine whether other services and acts not enumerated in this Act may constitute the practice of law.

The Committee argues that the legislature is making clear that the courts should decide what is the practice of law. The court of appeals held that judges and juries are both components of the judicial branch, and therefore this language "does not mandate that a judge alone should decide." 674 S.W.2d at 806. We will examine the history of this language to determine the legislative intent.

In *Hexter Title & Abstract Co. v. Grievance Committee, Fifth Congressional Dist., State Bar of Texas*, 142 Tex. 506, 179 S.W.2d 946 (1944), this court reviewed certain acts to determine if they constituted the unauthorized practice of law under article 430a of the 1925 Penal Code (repealed).[1] After finding a violation under the statute,

[692 S.W.2d 51]

this court specifically left undecided "whether or not this court would have the implied authority to determine what would constitute the practice of law, independent of the statute. . . ." *Id.* at 954. In the companion cases of *Grievance Committee, State Bar of Texas, Twenty-First Congressional Dist. v. Dean*, 190 S.W.2d 126 (Tex.Civ.App.—Austin 1945, no writ) and *Grievance Committee, State Bar of Texas, Twenty-First Congressional Dist. v. Coryell*, 190 S.W.2d 130 (Tex.Civ.App.—Austin 1945, writ ref'd w.o.m.), the Austin court of appeals addressed this previously reserved question, observing:

> independently of any statutory provisions as to what may constitute practice of law, the court has the duty and the inherent power to determine in each case what constitutes the practice of law, and to inhibit persons from engaging in the practice of law without having obtained a license to do so. This power of the court, the related statutes of this State, and the decisions are more fully discussed in our opinion in the companion *Dean* case.

Coryell at 131. In *Dean*, the court stated that the legislative definition was not exclusive and "does not deprive the judicial branch of the power and authority, both under the State Bar

[1] Unauthorized Practice Act, ch. 238, 1933 Tex. Gen.Laws 835, 835-38, *repealed by* Act of June 1, 1949, ch. 301 § 1, 1949, Tex.Gen.Laws 548.

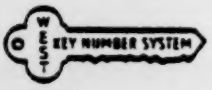
Act and the adjudicated cases, to determine whether other services and acts not therein enumerated, may constitute the practice of law." *Dean* at 129.

[4, 5] The legislature lifted the language from *Dean* and placed it in section 19(a) of the State Bar Act with the apparent intent to recognize the inherent power of the courts to determine what is the practice of law on a case by case basis, unconfined by the statute. *Coryell* and *Dean* have been cited by this court in recognizing the inherent power of the courts. *See Eichelberger v. Eichelberger,* 582 S.W.2d 395, 398 & n. 1 (Tex.1979). Therefore, even though we have used the legislative definition of the practice of law to aid us in this case, the courts are not bound by the jury's determination of whether the undisputed acts fell within this statutory definition.

[6-9] The court of appeals determined that this final question should be one for the jury and relied on *Robertus v. State,* 119 Tex.Cr.R. 370, 45 S.W.2d 595, 597 (1931) which held that a jury should decide whether certain activities constituted the practice of medicine. 674 S.W.2d at 807. Cases involving other professions are not determinative here. The courts have the duty and authority to supervise the legal profession by ensuring that those practicing law are qualified and by determining the boundaries of the practice of law. The direct policing relationship between the courts and the legal profession does not exist between the courts and other professions. The right to trial by jury still exists, of course, in cases where the alleged acts are disputed and factual determinations must be made, but the courts may ultimately decide whether certain undisputed activities constitute the unauthorized practice of law.

We hold that the trial court was proper in rendering judgment n.o.v. and in granting the permanent injunction against the Cortezes. Accordingly, the judgment of the court of appeals is reversed, and the trial court judgment is affirmed.

[674 S.W.2d 803]



Eddie CORTEZ and Rita Cortez
Individually and d/b/a Cortez Agency, Appellants.

v.

UNAUTHORIZED PRACTICE OF LAW COMMITTEE, STATE BAR OF TEXAS, Appellee.

No. 05-84-00072-CV.

Court of Appeals of Texas, Dallas.

May 25, 1984.

Rehearing Denied July 16, 1984.

Unauthorized practice of law committee brought action against private immigration service and its owners to enjoin them from engaging in acts and practices which allegedly constituted unauthorized practice of law. The 134th District Court, Dallas County, Snowden M. Leftwich, Jr., J., granted committee's motion for judgment notwithstanding the verdict after jury found that owners exercised no legal skill or knowledge in performing certain services pertaining to immigration, and entered permanent injunction against owners. Defendants appealed. The Court of Appeals, Witham, J., held that: (1) under circumstances, what constitutes practice of law can be question of fact for jury to determine; (2) evidence raised jury issue of whether service was engaged in unauthorized practice of law; and (3) committee was liable for all court costs.

Reversed and rendered.

1. Injunction ⇐ 130

What constitutes practice of law can be question of fact for jury to determine: statute granting "judicial branch" power to make such determination does not render question one of law for the court. Vernon's Ann.Texas Civ.St. art. 320a-1, §§ 19, 19(a).

2. Attorney and Client ⇐ 11(2)

In construing what acts are prohibited as constituting unauthorized practice of law, it is impossible to define comprehensively the practice of law, and each case must be decided on its own particular facts. Vernon's Ann.Texas Civ.St. art. 320a-1.

3. Trial ⇐ 388(4)

That facts are undisputed does not always eliminate right to fact-finding: if reasonable minds can draw different inferences or conclusions from undisputed facts, a fact issue is presented.

4. Evidence ⇐ 506
Injunction ⇐ 130

Evidence, including evidence that private immigration service assisted clients in filling out immigration forms raised jury issue of whether service was engaged

[674 S.W.2d 804]

in unauthorized practice of law, although evidence was undisputed; thus, expert testimony on issue was properly admitted. Vernon's Ann.Texas Civ.St. art. 320a-1.

5. Trial ⇐ 139.1(3)

Generally, it is peculiarly within province of jury to weigh opinion evidence and judgment of experts.

6. Trial ⇐ 140(1)

It is within province of jury to decide which expert witnesses should be credited.

7. States ⇐ 190

Where state enters courts as a litigant, it places itself on same basis as any other litigant.

8. States ⇐ 215

Ordinarily, in absence of statute exempting governmental unit from payment of court costs, it is liable just as any other litigant. Vernon's Ann.Texas Rules Civ. Proc., Rules 131, 448.

9. Injunction ⇐ 200

Unauthorized practice of law committee was liable for court costs in action to enjoin private immigration service from engaging in acts and practices which allegedly constituted unauthorized practice of law. Vernon's Ann.Texas Rules Civ. Proc., Rules 131, 448.

Allen Weed, Dallas, for appellants.

Bertran T. Bader, III, Dallas for appellee.

Before STOREY, WHITHAM and SHUMPERT, JJ.

WHITHAM, Justice.

This is an injunction case. Appellee, the Unauthorized Practice of Law Committee of the State Bar of Texas, sued appellants, Eddie and Rita Cortez Individually and d/b/a the Cortez Agency, under TEX.REV.CIV.STAT.ANN. art 320a-1 (Vernon Supp. 1984), to enjoin them from engaging in acts and practices which constitute the unauthorized practice of law. The jury found that the Cortezes exercised no legal skill or knowledge in performing certain services pertaining to immigration. The trial court granted the committee's motion for judgment notwithstanding the verdict and entered a permanent injunction against the Cortezes.

In their first point, the Cortezes contend that the evidence raised an issue of fact for the jury. In their second point, the

Cortezes contend that the question of what acts constitute the practice of law is for the jury. In their third point, the Cortezes contend that the trial court erred in holding as a matter of law that their acts and practices constituted the practice of law. We agree and conclude that the trial court erred in rendering judgment notwithstanding the verdict. Accordingly, we reverse and render judgment dissolving the injunction.

Mr. and Mrs. Cortez own and operate the Cortez Agency, which consists of bookkeeping and immigration services. The Cortezes advertise their immigration services, for which they charge a fee, usually $400.00, in publications which generally serve Spanish speaking readers. A fair translation of one such advertisement is as follows:

> The Cortez Agency has had 35 years of experience in every kind of immigration case.

Neither of the Cortezes is or claims to be a licensed attorney. The Cortez Agency was begun in 1947 by Mr. Cortez's father and has been located in the same building since 1952. The father started the agency at the suggestion of the vice-consul of the Mexican Consul's office, which recognized the need for this kind of service. The father retired in 1972 and the Cortezes became involved in the agency three years later in 1975. Mr. Cortez now performs the bookkeeping and tax services, while his wife primarily handles the immigration work taught her by her father-in-law. Mrs. Cortez admitted she knew nothing about the Immigration and Nationality Act.

The agency's customers are interested in obtaining permanent residency in the United States, for themselves or others. A

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method of obtaining the status of 'legal alien' is to qualify under one of the categories of 'preferences.' A 'preference' deals with eligibility by virtue of the alien's relationship with a United States citizen or permanent resident. Mrs. Cortez questioned customers and determined if they qualified for a preference

under the instructions on certain forms. If they did, she aided the customer in filling out the forms, and told them where to file it. Mrs. Cortez testified that normally there were three forms to be completed: I-130 (Petition to Classify Status of Alien Relative for Issuance of Immigration Visa); G-325A (Biographical Information); and I-485 (Petition to Acquire Residency). Additionally, Mrs. Cortez helped prepare various other forms relating to immigration matters. For example, she occasionally helped prepare the I-140 (Petition to Classify Preference Status of Alien on the Basis of Profession or Occupation). She testified, however, that she did not make the determination whether the alien required the I-130 (preference based on a relative) or the I-140 (preference based on a job), because the I-140 was initiated by the alien's employer and approved by the Department of Labor before reaching her. Twice a week, a licensed attorney at law came to his rent-free office provided by the agency to offer legal advice to their customers needing it. He did not review the files prepared by Mrs. Cortez and did not represent the agency. The agency referred customers to him to handle such matters as deportation proceedings and for advice and legal counsel.

Both parties called as experts qualified attorneys at law. The Cortezes' expert, Mr. Sauceda, testified that in his opinion Mrs. Cortez was not rendering services requiring the use of legal skill or knowledge. Upon cross-examination, Mr. Sauceda disagreed with the characterization of the form I-130 as a petition "as attorneys would say to start an action in a lawsuit." Mr. Sauceda also testified that the I-130 is much different from a will or other legal document which requires appropriate or "artful" legal language and legal judgment since there is only one standardized form to start the immigration process and that is the I-130. In Mr. Sauceda's opinion, neither the selection nor completion of the I-130 requires legal skill or judgment. As to other forms, Mr. Sauceda testified that these merely inquire further into the background of the alien and did not require legal judgment.

On the other hand, the committee's expert witness, Mr. Foster, presented a contrary view. Mr. Foster testified that services such as those rendered by the Cortez Agency would require legal skill and knowledge. In particular, Mr. Foster testified that one must exercise legal skill in simply deciding whether or not to file an I-130. This conflicts directly with the viewpoint which Mr. Sauceda expressed, namely, that the I-130 is the only way to begin the immigration process. Mr. Foster further testified that selection of other forms requires legal skill and knowledge. Mr. Foster testified that legal skill is required to determine how much should be disclosed in the various forms, while Mr. Sauceda testified that unless the form is completely filled out, the Immigration and Naturalization Service will reject it.

The committee did not object to the court's charge which submitted the following sole special issue to the jury without explanatory instruction:

> Do you find from a preponderance of the evidence that the Cortez Agency has given advice or rendered service requiring the use of legal skill and knowledge in interviewing persons and advising them as to whether or not to file a petition or application under the Immigration and Naturalization Act to secure a benefit for the client or relative of the client which require a careful determination of the facts, conclusions and legal consequences involved?

The jury answered "we do not."

This is a case of first impression in Texas. None of the Texas cases dealing with the unauthorized practice of law have addressed the question of whether immigration services such as those provided by the Cortezes constitute the practice of law. Nor has any reported case in Texas or

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elsewhere been found which has decided whether it is within the province of the judge or of the jury to characterize acts or services alleged to be the practice of law. Thus, under the points of error, we must decide whether there can be a fact question for the jury in the present case and, if so, whether the evidence raised an issue for the jury.

First, we consider whether there can be a fact question for the jury. We begin with this understanding of the practice of law:

> According to the generally understood definition of the practice of law, it embraces the preparation of pleadings and other papers incident to actions of special proceedings, and the management of such actions and proceedings on behalf of clients before judges in courts. However, the practice of law is not confined to cases conducted in court. In fact, the major portion of the practice of any capable lawyer consists of work done outside of the courts. The practice of law involves not only appearance in court in connection with litigation, but also services rendered out of court, and includes the giving of advice or the rendering of any service requiring the use of legal skill or knowledge, such as preparing a will, contract or other instrument, the legal effect of which under the facts and conclusions involved must be carefully determined.

Davies v. Unauthorized Practice Committee of the State Bar of Texas, 431 S.W.2d 590, 593 (Tex. Civ.App.—Tyler 1968, writ ref'd n.r.e.).

[1] We have looked long and hard at the undisputed facts as to the acts and practices of the Cortezes. Unlike the trial court, we cannot say with certainty that those services require "the use of legal skill or knowledge." *Davies*, 431 S.W.2d at 593. Nor can we say with certainty that "the legal effect [of the acts and practices] must be carefully determined." 431 S.W.2d at 593. We conclude that in the present case the undisputed evidence does not permit a holding as a matter of law that the acts and practices of the Cortezes constituted the practice of law. For example, consider the need to weigh evidence of the Cortez advertisement, which might indicate the practice of law, against evidence of the Cortez referral of its customers needing legal advice to a licensed attorney at law, which might negate the practice of law. Therefore, in a case such as the present case, we conclude that the judicial decision-making process requires fact finding to determine whether the Cortezes engaged in the practice of law. Under our system, the jury must make the necessary fact findings.

Pointing to the words "the judicial branch," the committee, nevertheless, insists that the question is one of law for the court pursuant to TEX.REV.CIV.STAT.ANN. art. 320a-1, § 19(a) (Vernon Supp. 1984). That statute reads:

> For purposes of this Act, the practice of law embraces the preparation of pleadings and other papers incident to actions of special proceedings and the management of the actions and proceedings on behalf of clients before judges in courts as well as services rendered out of court, including the giving of advice or the rendering of any service requiring the use of legal skill or knowledge, such as preparing a will, contract, or other instrument, the legal effect of which under the facts and conclusions involved must be carefully determined. This definition is not exclusive and does not deprive *the judicial branch* of the power and authority both under this Act and the adjudicated cases to determine whether other services and acts not enumerated in this Act may constitute the practice of law. (emphasis ours.)

In our view, both judge and jury are components of "the judicial branch." Consequently, we conclude that article 320a-1, § 19, does not mandate that a judge alone should decide. Therefore, we hold that article 320a-1, § 19, does not render the question one of law for the court.

[2] In construing what acts are prohibited, it is impossible to define comprehensively the practice of law and each case must be decided on its own particular facts. *Palmer v. Unauthorized Practice Com-*

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mittee of the State Bar of Texas, 438 S.W.2d 374, 376 (Tex.Civ.App.—Houston [14th Dist.] 1969, no writ). Cases from other jurisdictions suggest that in a situation such as the present case the question of what constitutes the practice of law should be a question for the jury. This suggestion has been expressed this way:

> The development of any practical criterion for determining what constitutes the practice of law, as well as the application of such criterion, must be closely related to the purposes for which attorneys are licensed as the exclusive occupants of their field. However, what is difficult or

> doubtful question of law demanding the application of a trained legal mind *is not to be measured by the comprehension of a trained legal mind, but by the understanding thereof which is possessed by a reasonably intelligent layman* who is reasonably familiar with similar transactions.

7 C.J.S. *Attorney and Client* § 29 (1980) at 862 (emphasis added); *Gardner v. Conway*, 234 Minn. 468, 48 N.W.2d 788, 794 (1951); and *Agran v. Shapiro*, 127 Cal. App.2d Sup. 807, 273 P.2d 619, 626 (1954).

Furthermore, in cases involving the unauthorized practice of medicine, a Texas court has held that it is for the jury to decide whether the defendant is practicing medicine. *Robertus v. State*, 119 Tex. Crim. 370, 45 S.W.2d 595, 597 (1931) (question of whether defendant chiropractor was "practicing medicine" was a conclusion of fact for the jury to decide). With respect to the practice of medicine, the general rule has been stated as follows:

> In prosecution for practicing medicine or some specific branch of the healing arts without a license or authority, it is for the jury to decide, where the evidence is sufficient.

70 C.J.S. *Physicians and Surgeons*, § 28 (1951) at 929. We conclude, therefore, that the judicial system must be even handed in its approach. Judges, as former lawyers, may feel qualified to characterize challenged conduct in a case involving the practice of law, yet admit lack of expertise where other regulated professions are concerned. Nevertheless, the question does not become any less one of fact because judges are lawyers and jurors are not.

[3] We conclude that the trial court erred in rendering judgment notwithstanding the verdict on the basis that the facts were undisputed and there remained only a question of law for the courts. That the facts are undisputed does not always eliminate the right to a fact finding. If reasonable minds can draw different inferences or conclusions from undisputed facts, a fact issue is presented. *Commercial Standard Insurance Co. v.*

Davis, 134 Tex. 487, 137 S.W.2d 1, 2 (1940). We conclude that in the present case reasonable minds could draw different inferences or conclusions from the undisputed facts. It follows, and we so hold that there is a fact question for the jury in the present case. We emphasize, however, that we reach this holding under the facts of the present case. We do not hold that there may never be a case in which the undisputed evidence shows as a matter of law that a person was engaged in the practice of law. *See e.g., Davies*, 431 S.W.2d at 592.

[4] Next, we consider whether the evidence raised an issue for the jury. We have concluded that in the present case reasonable minds could draw different inferences or conclusions from the undisputed evidence. It follows, and we so hold, that such evidence raised an issue for the jury. While the jury also heard expert testimony, this opinion is not to be read as holding that the expert testimony itself raised an issue for the jury. We do not hold that expert testimony can be used to create a fact issue in a situation where reasonable minds could *not* draw different inferences or conclusions from the undisputed evidence.

[5, 6] The expert testimony, however, was properly admitted in evidence once the jury issue was raised by the undisputed evidence. As a general rule, it is peculiarly within the province of the jury to weigh opinion evidence and the judgment of experts. *Octane Oil Refining Co. v. Blankenship-Antilley Implement Co.*, 117 S.W.2d 885, 886 (Tex.Civ.App. —Eastland

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1938, no writ). It is within the province of the jury to decide which expert witness should be credited. *American Airlines, Inc. v. United States*, 418 F.2d 180, 194 (5th Cir.1969). Therefore, it was the jury's prerogative in the present case to credit the testimony of Mr. Sauceda over the testimony of Mr. Foster. The jury chose to draw the same conclusions from the facts as Mr. Sauceda drew from them, specifically, that the

Cortezes exercised no legal skill or judgment in performing their immigration services. In ignoring the answer of the jury, we conclude that the trial court encroached upon the province of the jury.

Accordingly, we hold that it was proper to submit the issue to the jury and error to disregard its findings. It follows, and we so hold, that the trial court erred in rendering judgment notwithstanding the verdict and in holding as a matter of law that the acts and practices of the Cortezes constituted the practice of law.

We reverse the judgment of the trial court and render judgment dissolving the trial court's permanent injunction.

On Motion For Rehearing

In its motion for rehearing, the committee asserts in a point of error that we erred in taxing costs against it because it is exempt from payment of costs. Although the committee cites no authority and makes no argument under this point, we assume the committee claims exemption as an instrumentality of the State.

[7, 8] TEX.R.CIV.P. 448 before and after amendment effective April 1, 1984, provides that "in any cause reversed by the Court of [Civil] Appeals, the appellant shall be entitled to an execution . . . against the appellee for costs occasioned by such appeal . . . " TEX.R.CIV.P. 131 provides that "the successful party to a suit shall recover of his adversary all costs incurred therein, except where otherwise provided." The Cortezes prevailed. Therefore, costs were assessed against the committee based on the well established rule that where the State enters the courts as a litigant, it places itself on the same basis as any other litigant. State of Texas by *Reyna v. Goldberg*, 604 S.W.2d 549, 553 (Tex.Civ.App.—Waco 1980, no writ); *Glass v. Great Southern Life Insurance Co.*, 170 S.W.2d 247, 249 (Tex.Civ.App.—Galveston 1943, writ ref'd w.o.m.).

Ordinarily, in the absence of a statute exempting a governmental unit from the payment of court costs, it is liable just as any other litigant. *Childs v. Reunion Bank*, 587 S.W.2d 466, 471 (Tex.Civ.App.—Dallas 1979, writ ref'd n.r.e.); *see, Smith v. State*, 500 S.W.2d 682 (Tex.Civ.App.—Corpus Christi 1973, no writ)—(court's judgment operated to adjudge costs against State in a disbarment action, even though it was silent on the matter; and on rehearing, State waived right to complain as its motion to retax was untimely). We find no statute exempting the committee from payment of court costs. *Cf. County of Dallas v. Yellow Cab of Dallas, Inc.*, 573 S.W.2d 44 (Tex.Civ.App.—Eastland 1978, writ ref'd n.r.e.), in which statute prohibited taxing of costs.

[9] For cases assessing costs against the State or its governmental entities, see *Kierstead v. City of San Antonio*, 643 S.W.2d 118, 122 (Tex.1982); *Parker County v. Spindletop Oil & Gas Co.*, 612 S.W.2d 944, 949 (Tex.Civ.App.—Fort Worth 1981), *aff'd in part and rev'd in part*, 628 S.W.2d 765 (Tex.1982); *Reyna*, 604 S.W.2d at 553; *Combined American Insurance Co. v. City of Hillsboro*, 421 S.W.2d 488, 491 (Tex.Civ.App.—Waco 1967, writ ref'd n.r.e.); *Pierce v. City of Stephenville*, 206 S.W.2d 848, 852 (Tex.Civ.App.—Eastland 1947, no writ); *Glass*, 170 S.W.2d at 249; *Ibanez v. State*, 123 S.W.2d 704 (Tex.Civ.App.—El Paso 1938, no writ); *Norwood v. Taylor County*, 93 S.W.2d 573, 575 (Tex.Civ.App.—Eastland 1936, writ dism'd). Accordingly, we hold that the committee is liable for the court costs in the present case. All costs in the trial court and in this court are taxed against the committee. The committee's motion for rehearing is overruled.

NO. 83-9041-G

UNAUTHORIZED PRACTICE OF LAW COMMITTEE, STATE BAR OF TEXAS, Plaintiff	IN THE DISTRICT COURT
vs.	DALLAS COUNTY, TEXAS
EDDIE CORTEZ and RITA CORTEZ Individually and d/b/a CORTEZ AGENCY, Defendants	134th JUDICIAL DISTRICT

PERMANENT INJUNCTION

BE IT REMEMBERED that on the 22nd day of August, 1983, came on to be heard the above numbered and entitled cause and came the Plaintiff, Unauthorized Practice of Law Committee, State Bar of Texas, by and through its attorneys, and came the Defendants, Eddie Cortez and Rita Cortez, individually and d/b/a Cortez Agency, in person and by and through their attorney of record and came Cathy Rainey and eleven other duly qualified citizens of Dallas County, Texas, who were impaneled and sworn as a jury in this cause and thereafter did, with the Court, hear the evidence and the argument of counsel and retire to consider their verdict and an answer to Special Issue No. 1 submitted by the Court and answered as follows: "We do not." The Court, having received such verdict and having discharged the jury and having been presented the motion of the Defendant for judgment and the motion of the Plaintiff for judgment notwithstanding the verdict, and finds that it is undisputed in the evidence as to the acts and practices engaged in by the Cortez Agency and the Court, being of the opinion that those acts or practices constitute the practice of law, and it being undisputed that neither Eddie Cortez nor Rita

Cortez are at present, nor have they ever been, licensed attorneys in the State of Texas so as to allow them to engage in acts or practices that would constitute the practice of law, the Court is of the opinion that the Plaintiff is entitled to the relief prayed for in its original petition and that a permanent injunction should be entered for and in behalf of the Plaintiff and against the Defendants as set out below. It is therefore

ORDERED, ADJUDGED AND DECREED, that Eddie Cortez and Rita Cortez, individually and doing business as Cortez Agency and any agent, servant, employee or other person in active concert or participation with them are hereby permanently and perpetually enjoined from:

1. Engaging in any acts or practice which constitutes the practice of law including and without limitation soliciting clients by the use of any advertisements which connote or indicate to any person that the Defendants are able to give advice, counsel or render services with regard to the Immigration and Naturalization Act and its regulations, are competent and qualified to handle immigration cases or "problems" regarding immigration or the Immigration and Naturalization Service;

2. Advising clients or customers as to whether or not they should seek alien employment labor certification under provisions of the Immigration and Naturalization Act and the appropriate regulations;

3. Advising clients as to whether or not they should file an Immediate Relative Petition or other petition or application under the Act seeking first, second, third, fourth, fifth or sixth classification or preference;

4. Advising clients as to whether or not they should apply for naturalization under the Immigration and Naturalization Act and the appropriate regulations;

5. In interviewing clients and thereafter representing to clients that a particular form, application or instrument that is

to be filled out and presented to the Immigration and Naturalization Service will obtain for the client the result desired by such client;

6. In preparing for clients for submission to the Immigration and Naturalization Service any petition or applications such as an I-130, I-94, I-90, N-400, N-600, I-212, G-641, G-699 or other petition or application wherein the person for whom such petition or application is being prepared is seeking to obtain a benefit from or exercising a right granted by Immigration and Naturalization Act and the regulations enacted thereunder.

All costs in this proceeding are hereby taxed against the Defendants, Eddie Cortez and Rita Cortez, individually and doing business as Cortez Agency, jointly and severally, and for which let execution issue if not timely paid.

SIGNED the 28th day of November, 1983.

Judge Presiding

ENDORSEMENT ON INSTRUMENT NO. 83-9041-G
Unauthorized Practice of Law Committee, State Bar of Texas Vs. Eddie Cortez and Rita Cortez Individually and d/b/a Cortez Agency
PERMANENT INJUNCTION
Signed and Entered: November 28, 1983
Recorded in Vol. G-88, Page 31
IN THE MINUTES OF THE 134TH JUDICIAL DISTRICT COURT OF DALLAS COUNTY, TEXAS

PETITION TO CLASSIFY STATUS OF ALIEN RELATIVE FOR ISSUANCE OF IMMIGRANT VISA

(PLEASE TEAR OFF HERE BEFORE SUBMITTING PETITION)

INSTRUCTIONS

READ INSTRUCTIONS CAREFULLY.

FEE WILL NOT BE REFUNDED.

Not all of these instructions relate to the type of case which concerns you. Please read carefully those which do relate. Failure to follow instructions may require return of your petition and delay final action.

1. **Eligibility.** A petition may be filed by a citizen or a lawful permanent resident of the United States to classify the status of alien relatives as follows:

   a. *By citizen of the United States:* Except as noted in paragraph 2, a citizen of the United States may submit a petition on behalf of a spouse or sons and daughters (regardless of age or marital status). A United States citizen at least 21 years of age may submit a petition for a parent, brother, or sister. If the petition is for a son or daughter who is married or at least 21 years of age, or both, or for a brother or sister, do not submit petitions for the beneficiary's spouse or unmarried children under 21 years of age. If the petition is approved, the beneficiary's spouse and unmarried children under 21 years of age, if accompanying or following to join him/her, will automatically be eligible for the same preference status.

   b. *By a lawful permanent resident alien:* Except as noted in paragraph 2, an alien lawfully admitted to the United States for permanent residence may submit a petition on behalf of a spouse or an unmarried child regardless of age. However, if a lawful permanent resident alien is married to a citizen and wishes to petition for an unmarried child, such alien should consult the nearest office of the Immigration and Naturalization Service for advice as to whether it would be preferable, or necessary, for the United States citizen spouse to submit the petition instead. If the petition is for and unmarried son or daughter, do not submit petitions for the beneficiary's unmarried children under 21 years of age. If the petition is approved, the beneficiary's unmarried children under 21 years of age, if accompanying or following to join him/her, will automatically be eligible for the same preference status.

2. **Petitions which cannot be approved.** Approval cannot be given to a petition on behalf of—

   a. A parent, brother, or sister, unless the petitioner is a United States citizen and at least 21 years of age.

   b. An adoptive parent, unless the relationship to the United States citizen petitioner exists by virtue of an adoption which took place while the child was under the age of 14, and the child has thereafter been in the legal custody of, and has resided with, the adopting parent or parents for at least 2 years. While the legal custody must be after the adoption, residence occurring prior to the adoption can satisfy the residence requirement.

   c. A stepparent, unless the marriage creating the status of stepparent occurred before the citizen stepchild reached the age of 18 years.

   d. An adopted child, unless the child was adopted while under the age of 14 and has thereafter been in the legal custody of, and has resided with, the adopting parent or parents for at least 2 years. While the legal custody may be after the adoption, residence occurring prior to the adoption can satisfy the residence requirement.

   e. A stepchild, unless the child was under the age of 18 years at the time the marriage creating the status of stepchild occurred.

   f. A wife or husband by reason of any marriage ceremony where the contracting parties thereto were not physically present in the presence of each other, unless the marriage shall have been consummated.

   g. A grandparent, grandchild, nephew, niece, uncle, aunt, cousin, or in-law.

3. **Supporting documents.** The following documents must be submitted with the petition:

   a. *To prove United States citizenship of petitioner* (where petition is for relative of a citizen).

      (1) If you are a citizen by reason of birth in the United States, submit your birth certificate. If your birth certificate is unobtainable, see "Secondary Evidence" below for submission of document in place of birth certificate.

      (2) If you were born outside the United States and became a citizen through the naturalization or citizenship of a parent or husband, and have not been issued a certificate of citizenship in your own name, submit evidence of the citizenship and marriage of such parent or husband, as well as termination of any prior marriages. Also, if you claim citizenship through a parent, submit your birth certificate and a separate statement showing the date, port, and means of all your arrivals and departures into and out of the United States. (Do not make or submit a photostat of a certificate of citizenship. See Instruction No. 9.)

      (3) If your naturalization occurred within 90 days immediately preceding the filing of this petition, or if it occurred prior to September 27, 1906, the naturalization certificate must accompany the petition. Do not make or submit a photostat of such certificate. (See Instruction No. 9.)

   b. *To prove family relationship between petitioner and beneficiary:*

      (1) If petition is submitted on behalf of a wife or husband, it must be accompanied by a certificate of marriage to the beneficiary and proof of legal termination of all previous marriages of both wife and husband.

      (2) If a petition is submitted by a mother on behalf of a child (regardless of age), the birth certificate of the child, showing the name of the mother, must accompany the petition. If the petition is submitted by a father or stepparent on behalf of a child (regardless of age), certificate of marriage of the parents, proof of termination of their prior marriages, and birth certificate of the child showing the names of the parents thereon, must accompany the petition.

      (3) If petition is submitted on behalf of a brother or sister, your own birth certificate and the birth certificate of the beneficiary, showing a common mother, must accompany the petition. If the petition is on behalf of a brother or sister having a common father and different mothers, marriage certificate of your parents, and proof of termination of their prior marriages must accompany the petition.

      (4) If petition is submitted on behalf of a mother, your own birth certificate, showing the name of your mother, must accompany the petition. If petition is submitted on behalf of a father or stepparent, your own birth certificate, showing the names of the parents thereon, and marriage certificate of your parents must accompany the petition, as well as proof of termination of prior marriages of your parents.

      (5) If either the petitioner or the beneficiary is a married woman, marriage certificate(s) must accompany the petition. However, when the relationship between the petitioner and beneficiary is that of a mother and child (regardless of age), the mother's marriage certificate need not be submitted if the mother's present married name appears on the birth certificate of the child.

      (6) If the petitioner and the beneficiary are related to each other by adoption, a certified copy of the adoption decree must accompany the petition.

   c. Secondary evidence.

      If it is not possible to obtain any one of the required documents or records shown above, the following may be submitted for consideration:

      (1) Baptismal certificate. — A certificate under the seal of the church where the baptism occurred, showing date and place of the child's birth, date of baptism, and the names of the child's parents.

      (2) School record. — A letter from the school authorities having jurisdiction over school attended (preferably the first school), showing the date of admission to the school, child's date of birth or age at that time, place of birth, and the names and places of birth of parents, if shown in the school records.

      (3) Census Record. — State or federal census record showing the name(s) and place(s) of birth, and date(s) of birth or age(s) for the person(s) listed.

      (4) Affidavits. — Written statements sworn to or affirmed by two persons who were living at the time, and who have personal knowledge, of the event you are trying to prove — for example, the date and place of birth, marriage, or death. The persons making the affidavits may be relatives and need not be citizens of the United States. Each affidavit should contain the following information regarding the person making the affidavit: his/her full name and address; date and place of birth; relationship to you, if any; full information concerning the event; and complete details concerning how he/she acquired knowledge of the event.

BEST AVAILABLE COPY

d. Documents and secondary evidence unavailable.

If you are unable to submit required evidence of birth, death, marriage, divorce or adoption because the event took place in a foreign country which does not record such events, and secondary evidence is unavailable, attach a statement to this effect, setting forth the date and place of each of your entries into the United States. Also attach any letters, photographs, remittances or similar documents which tend to support the claimed relationship and three passport type photographs of yourself.

e. Documents previously submitted.

If your birth abroad, or the birth abroad of any person through whom citizenship is claimed by you, was registered with an American consul, submit with this petition any registration form that was issued. If any required documents were submitted to and retained by the American consul in connection with such registration, or in connection with the issuance of a United States passport or in any other official matter, and you wish to use such documents in support of this petition instead of submitting duplicate copies, merely list such documents in an attachment to this petition and show the location of the consulate. If you wish to make similar use of required documents contained in any Immigration and Naturalization Service file, list them in an attachment to this petition and identify the file by name and number. Otherwise, the documents required in support of this petition must be submitted.

f. Documents in general.

All supporting documents must be submitted in the original. If you desire to have the original returned to you, and if copies are by law permitted to be made, you may submit photostatic or typewritten copies. Photostatic copies unaccompanied by the original may be accepted if the copy bears a certification by an immigration or consular officer that the copy was compared with the original and found to be identical. Any document in a foreign language must be accompanied by a summary translation in English. A summary translation is a condensation or abstract of the document's text. The translator must certify that he is competent to translate and that the translation is accurate. (Do not make a copy of a certificate of naturalization or citizenship.) (See Instruction No. 9.)

4. **Preparation of petition.** A separate petition for each beneficiary must be typewritten or printed legibly with pen and ink.

(If you need more space to answer fully any questions on this form, use a separate sheet(s), identify each answer with the number of the corresponding question, and date and sign each sheet.)

5. **Execution of petition.** You must sign the petition in your full, true, and correct name and affirm or make it under oath.

a. In the United States the petition may be sworn to or affirmed before an immigration officer without the payment of fee, or before a notary public or other officer authorized to administer oaths for general purposes, in which case the official seal or certificate of authority to administer oaths must be affixed.

b. Outside the United States the petition must be sworn to or affirmed before a United States immigration or consular officer.

c. A member of the Armed Forces of the United States, either in the United States or abroad, may swear to or affirm the petition before an officer of the Armed Forces authorized to perform notarial acts under Article 136, Uniform Code of Military Justice. His/her spouse or other dependent, abroad only, may swear to or affirm the petition in like manner.

6. **Submission of petition.** If you are residing in the United States, send the completed petition to the office of the Immigration and Naturalization Service having jurisdiction over your place of residence. If you are residing outside the United States consult the nearest American consulate as to the consular office or foreign officer of the Service designated to act on your petition. If you are a United States citizen petitioning for an immediate relative classification in behalf of your unmarried child, the petition must be submitted in sufficient time for action to be completed on the petition and for the child to obtain a visa and reach the United States before the date on which he/she will be 21 years of age.

7. **Approval of petition.** Upon approval of a petition filed by a United States citizen for his/her alien spouse, unmarried minor child, or parent, an immigrant visa may be issued to the alien without regard to the annual limitation on immigrant visa issuance. In the cases of all other aliens for whom immigrant visa petitions are approved, an immigrant visa number will be required. Availability of an immigrant visa number depends on the volume of demand by aliens in the same visa classification who have an earlier priority date on the visa waiting list.

8. **Fee.** A fee of ten dollars($10) must be paid for filing this petition. It cannot be refunded regardless of the action taken on the petition. DO NOT MAIL CASH. ALL FEES MUST BE SUBMITTED IN THE EXACT AMOUNT. Payment by check or money order must be drawn on a bank or other institution located in the United States and be payable in United States currency. If petitioner resides in Guam, check or money order must be payable to the "Treasurer, Guam." If petitioner resides in the Virgin Islands, check or money order must be payable to the "Commissioner of Finance of the Virgin Islands." All other petitioners must make the check or money order payable to the "Immigration and Naturalization Service." When check is drawn on an account of a person other than the petitioner, the name of the petitioner must be entered on the face of the check. If petition is submitted from outside the United States, remittance may be made by bank international money order or foreign draft drawn on a financial institution in the United States and payable to the "Immigration and Naturalization Service" in United States currency. Personal checks are accepted subject to collectibility. An uncollectible check will render the petition and any document issued pursuant thereto invalid. A charge of $5.00 will be imposed if a check in payment of a fee is not honored by the bank on which it is drawn.

9. **Penalties.** Title 18, United States Code, section 1546, provides: "Whoever knowingly makes under oath any false statement with respect to a material fact in any application, affidavit, or other document required by the immigration laws or regulations prescribed thereunder, or knowingly presents any such application, affidavit, or other document containing any such false statement, shall be fined not more than $2,000 or imprisoned not more than 5 years, or both."

Title 18, United States Code, section 1426(h), provides: "Whoever, without lawful authority, prints, photographs, makes or executes any print or impression in the likeness of a """certificate of naturalization or citizenship, or any part thereof shall be fined not more than $5,000 or imprisoned not more than 5 years, or both."

10. **Authority.** The authority for collecting the information requested on this form is contained in 8 U.S.C. 1154(a). Submission of the information solicited is voluntary. The principal purpose for which the information is solicited is to determine the eligibility of the beneficiary for the benefits sought. The information solicited may also, as a matter of routine use, be disclosed to other federal, state, local, and foreign law enforcement and regulatory agencies, the Department of Defense including any component thereof (if either the beneficiary or petitioner has served, or is serving in the Armed Forces of the United States), the Department of State, Central Intelligence Agency, Interpol, and individuals and organizations, during the course of investigation to elicit further information required by this Service to carry out its functions. Failure to provide any or all of the solicited information may result in the denial of the petition.

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (per 100).

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

Form Approved
OMB NO. 43—RO 401

PETITION TO CLASSIFY STATUS OF ALIEN RELATIVE FOR ISSUANCE OF IMMIGRANT VISA

PLEASE NOTE
YOU ARE THE PETITIONER
AND YOUR RELATIVE
IS THE
BENEFICIARY

Fee Stamp

1. Name of beneficiary (Last, in CAPS) (First) (Middle)

2. Do Not Write in This Space

3. Names, birthdates and countries of birth of beneficiary's children:

4. Other names used: (including maiden name if married)

5. Country of beneficiary's birth

6. Date of beneficiary's birth (Month, day, year)

7. My name is: (Last, in CAPS) (First) (Middle)

8. My phone number is:

9. Other names used: (including maiden name if married woman)

10. Relationship of beneficiary to myself

11. I was born: (Month) (Day) (Year) in: (Town or city) (State or Province) (Country)

12. If you are a citizen of the United States, give the following:
a. Citizenship was acquired: (Check one)

☐ through birth in the U.S. ☐ through parents ☐ through naturalization ☐ through marriage

(1) If acquired through naturalization, give name under which naturalized, number of naturalization certificate, and date and place of naturalization

(2) If known, my former alien registration was A

(3) If acquired through parentage or marriage, have you obtained a certificate of citizenship in your own name?

(a) If so, give number of certificate and date and place of issuance:

(b) If not, submit evidence of citizenship in accordance with instruction 3 a (2)

13. If you are a lawful permanent resident alien of the United States, give the following:
a. Alien Registration Number:
A—
b. Date, place, and means of admission for lawful permanent residence

14. Beneficiary's marital status:
☐ Married ☐ Widowed ☐ Divorced ☐ Single

15. Name of beneficiary's spouse, if married, and date and country of birth (Omit this item if petition is for your spouse)

16. Full address of beneficiary's spouse and children, if any (Omit this item if petition is for your spouse)

17. If this petition is for your spouse or child, give the following:
a. Date and place of your present marriage
b. Names of my prior spouses
c. Names of spouse's prior spouses

18. Has this beneficiary ever been in the U.S.?
☐ YES ☐ NO

19. Are beneficiary and petitioner related by adoption?
☐ YES ☐ NO

—(CONTINUE WITH ITEM 20 ON REVERSE)—

OATH OR AFFIRMATION OF PETITIONER

I swear (affirm) that I know the contents of this petition signed by me and that the statements herein are true and correct.

Signature of petitioner (See instruction No. 5).....

Subscribed and sworn to (affirmed) before me this .....day of ..... , 19 ..... , at.....

(SEAL) My commission expires .....

(SIGNATURE OF OFFICER ADMINISTERING OATH) (TITLE)

SIGNATURE OF PERSON PREPARING FORM IF OTHER THAN PETITIONER

I declare that this document was prepared by me at the request of the petitioner and is based on all information of which I have any knowledge.

(SIGNATURE) (ADDRESS) (DATE)

RECEIVED	TRANS. IN	RET'D. TRANS. OUT	COMPL

FORM I—130
(Rev. 10-38-79) N

BEST AVAILABLE COPY

TO THE SECRETARY OF STATE:

The petition was filed on .....

The petition is approved for status under section:

- ☐ 201 (b) SPOUSE, CHILD
- ☐ 203 (a) (2)
- ☐ 201 (b) PARENT
- ☐ 203 (a) (4)
- ☐ 203 (a) (1)
- ☐ 203 (a) (5)

DATE OF ACTION

DD

DISTRICT

REMARKS

- ☐ PERSONAL INTERVIEW CONDUCTED
- ☐ DOCUMENT CHECK ONLY
- ☐ FIELD INVESTIGATION COMPLETED
- ☐ APPROVAL PREVIOUSLY FORWARDED

REMARKS *(Continued)*

(PETITIONER IS NOT TO WRITE ABOVE THIS LINE)

20. Check the appropriate box below and furnish the information required for the box checked

☐ Beneficiary will apply for a visa abroad at the American Consulate in _____
(CITY IN FOREIGN COUNTRY) *(FOREIGN COUNTRY)*

☐ Beneficiary is in the United States and will apply for adjustment of status to that of a lawful permanent resident in the office of the Immigration and Naturalization Service at _____
(CITY) (STATE)

If the application for adjustment of status is denied, the beneficiary will apply for a visa abroad at the American Consulate in _____
(CITY IN FOREIGN COUNTRY) (FOREIGN COUNTRY)

21. My residence in the United States is: *(C/O, if appropriate)* *(Apt. No.)* *(Number and Street)* *(Town or city)* *(State)* *(ZIP Code)*

22. My address abroad *(if any)* is: *(Number and street)* *(Town or city)* *(Province)* *(Country)*

23. Last address at which I and my spouse resided together
(Town or city) *(State or Province)* *(Country)* *(Apt. No.)* *(Number and street)* From *(Month)* *(Year)* To *(Month)* *(Year)*

24. Address in the United States where beneficiary will reside *(City)* *(State)*

25. Address at which beneficiary is presently residing *(Apt. No.)* *(Number and street)* *(Town or city)* *(Province or State)* *(ZIP Code)*

26. (a) Beneficiary's address abroad *(if any)* is: (Number and Street) (Town or City) (Province) (Country)

(b) If the beneficiary's native alphabet is other than Roman letters, write his/her name and address in the native alphabet
(Name) *(Number and Street)* *(Town or City)* *(Province)* *(Country)*

27. If this petition is for a child, *(a). is the child married?* _____ *(b). is the child your adopted child?* _____ *If so, give the names, dates, and places of birth of all other children adopted by you. If none, so state*

28. If this petition is for a brother or sister, are both your parents the same as the alien's parents? _____ If not, submit a separate statement giving full details as to parentage, dates of marriage of parents, and the number of previous marriages of each parent

29. If separate petitions are also being submitted for other relatives, give names of each and relationship to petitioner

30. Have you ever filed a petition for this alien before? _____ If so, give place and date of filing and result.

31. If beneficiary is in the United States, give the following information concerning beneficiary:

(a) Last arrived in U.S. as _____ *(Visitor, student, exchange alien, crewman, stowaway, etc.) on (Month) (Day) (Year)*

(b) Date beneficiary's stay expired or will expire as shown on his Form I-94 or I-95. (Month) (Day) (Year)

(c) Beneficiary's File number if any A-

(d) Name and address of present employer

(e) Date alien began this employment

PART 292—REPRESENTATION AND APPEARANCES

Sec.
292.1 Representation of others.
292.2 Organizations qualified for recognition; requests for recognition; withdrawal of recognition; accreditation of representatives; roster.
292.3 Suspension or disbarment.
292.4 Appearances.
292.5 Service upon and action by attorney or representative of record.
292.6 Interpretation.

AUTHORITY: Secs. 103, 292, 66 Stat. 173, 235; 8 U.S.C. 1103, 1362.

§ 292.1 Representation of others.

(a) A person entitled to representation may be represented by any of the following:

(1) *Attorneys in the United States.* Any attorney as defined in § 1.1(f) of this chapter.

(2) *Law students and law graduates not yet admitted to the bar.* A law student who is enrolled in the final year of an accredited law school or a law school graduate who is not yet admitted to the bar, provided that:

(i) He is appearing on an individual case basis at the request of the person entitled to representation;

(ii) In the case of a law student, he has filed a statement that he is participating, under the direct supervision of a faculty member or an attorney, in a legal aid program or clinic conducted by the law school, and that he is appearing without direct or indirect remuneration; and

(iii) His appearance is permitted by the official before whom he wishes to appear (namely a special inquiry officer, district director, officer-in-charge, regional commissioner, the Commissioner, or the Board), which official, if in his opinion special circumstances warrant it, may require that a law student be accompanied by the supervising faculty member or attorney.

(3) *Reputable individuals.* Any reputable individual of good moral character, provided that:

(i) He is appearing on an individual case basis, at the request of the person entitled to representation;

(ii) He is appearing without direct or indirect renumeration and files a written declaration to that effect;

(iii) He has a pre-existing relationship or connection with the person entitled to representation (e.g., as a relative, neighbor, clergyman, business associate or personal friend), provided that such requirement may be waived, as a matter of administrative discretion, in cases where adequate representation would not otherwise be available; and

(iv) His appearance is permitted by the official before whom he wished to appear (namely, a special inquiry officer, district director, officer-in-charge, regional commissioner, the Commissioner, or the Board), provided that such permission shall not be granted with respect to any individual who regularly engages in immigration and naturalization practice or preparation, or holds himself out to the public as qualified to do so.

(4) *Accredited representatives.* A person representing an organization described in § 292.2 of this chapter who has been accredited by the Board.

(5) *Accredited officials.* An accredited official, in the United States, of the government to which an alien owes allegiance, if the official appears solely in his official capacity and with the alien's consent.

(6) *Attorneys outside the United States.* An attorney other than one described in § 1.1(f) of this chapter, who does not maintain an office in the United States, who resides outside the United States and is licensed to practice law and in good standing in a court of general jurisdiction of the country in which he resides, and who is engaged in such practice.

(b) *Persons formerly authorized to practice.* A person, other than a representative of an organization described in § 292.2 of this chapter, who on December 23, 1952, was

authorized to practice before the Board and the Service may continue to act as a representative, subject to the provisions of § 292.3 of this chapter.

(c) *Former employees.* No person previously employed by the Department of Justice shall be permitted to act as a representative in any case in violation of the provisions of 28 CFR 45.735-7.

(d) *Amicus curiae.* The Board may grant permission to appear, on a case-by-case basis, as amicus curiae, to an attorney or to an organization represented by an attorney, if the public interest will be served thereby.

(e) Except as set forth in this section, no other person or persons shall represent others in any case.

[40 FR 23271, May 29, 1975]